

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TANYA DENISE STEWART

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07cv1270WJG-JMR

JACKSON COUNTY, MISSISSIPPI, *et al.*

DEFENDANTS

ORDER

THIS MATTER is before the Court, *sua sponte*, pursuant to Rule 41 of the Federal Rules of Civil Procedure. This case was filed on December 20, 2007, however, there is no evidence that Jackson County as a separate entity was served with process in this case. Federal Rule of Civil Procedure 4(m) defines the consequences of failure to effect service timely:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

It is undisputed that Jackson County was not served within the 120-day period, and process was not issued to this Defendant during or since that time, nor was an extension of time sought. The plain language of the rule requires the Court to extend time for service if the Plaintiff demonstrates good cause for the failure to serve the Defendants within the allotted time. *See Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir.1996).

Thorough examination of the Complaint in this case reveals no specific allegations brought against Jackson County. The Court has addressed a similar effort to sue Harrison

County without advancing specific allegations of wrongdoing and without identifying any custom or policy that might subject the County to liability in this case, and found that Harrison County was entitled to summary judgment on the claims advanced by Stewart in her Complaint.

Although rule 4(m) grants the court discretion to permit an extension of time for service even without a showing of good cause, under the circumstances of this case, the Court declines to exercise that discretion, choosing instead to dismiss this action without prejudice. *See Thompson v. Brown*, 91 F.3d 20, 21-22 (5th Cir.1996). It is therefore,

ORDERED AND ADJUDGED that Jackson County be, and is hereby, dismissed without prejudice. It is further,

ORDERED AND ADJUDGED that, all parties now having been dismissed, the Clerk of Court may close this record on the docket of the Court. It is further,

ORDERED AND ADJUDGED that each party bear their respective costs of this litigation.

SO ORDERED AND ADJUDGED, this the 16th day of September, 2009.

Walter J. Fox III
UNITED STATES SENIOR DISTRICT JUDGE